HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

M.A.C.M.A.Nos.241 and 254 of 2008

COMMON JUDGMENT :

These two appeals are arising out of the same order dated 22.09.2006, in O.P.No.1893 of 2002 on the file of Motor Accident Claims Tribunal-cum-III Additional Metropolitan Sessions Judge-cum-XVII Additional Chief Judge, City Civil Court, Hyderabad. MACMA.No.241 of 2008 is filed by the Insurance Company, to set aside the orders in the said O.P., whereas, MACMA.No.254 of 2008 is filed by the claimants for enhancement of compensation from Rs.91,600/- to Rs.1,50,000/-.

2. For the sake of convenience, the parties are referred to as arrayed in the O.P.

3. The O.P. is filed under Section 166 of the Motor Vehicles Act claiming compensation of Rs.1,50,000/- for the injuries sustained by the claimant in the accident occurred on 06.09.2000 at around 11.00 p.m. near Dal Mill, Nandigaon on N.H.7 due to the rash and negligent driving of the driver of the lorry bearing No. AP-11-T-3307.

4. Heard both sides and perused the material on record.

5. The learned Standing Counsel for the Insurance Company contended that there is no valid driving licence to the driver of the lorry and further, the injured was travelling as an unauthorized passenger in a goods vehicle, and therefore, the Insurance Company is not liable to pay compensation.

6. On the other hand, the learned counsel for the claimants contended that the Tribunal has erred in not calculating the compensation in proper perspective and it ought to have granted compensation on the higher side, as per the propositions of the Apex Court and prayed to enhance the compensation.

7. There is no dispute as to the nature of the accident. The entire case of the Insurance Company is that the injured/claimant is an unauthorized passenger in a goods vehicle and there is no valid driving licence to the driver of the lorry. As per the proposition laid in **National Insurance Co. Ltd. v. Pranay Sethi & others**[1], their Lordships have held that if there are any violations with

[1] 2017 ACJ 2700

regard to the policies of the Insurance Company, it is for the Insurance Company to pay compensation to the third parties at first instance and later to recover it from the owners of the offending vehicle (in short, pay and recover). The Insurance Company shall first pay the compensation and later recover it from the insured. Therefore, MACMA.No.241 of 2008 filed by the Insurance Company is liable to be dismissed.

8. It is the specific contention of the claimant that he was aged 35 years as on the date of the accident, working as a labour in M/s.Koya Company and was drawing a monthly salary of Rs.2,000/-. He sustained grievous injuries while travelling in the 1st respondent-Lorry for immersion of the idol of Lord Ganesha. He contended that the accident occurred due to the rash and negligent driving of the lorry, which dashed against stationed lorry parked beside the road. It is also the further contention of the claimant that he sustained grievous injury i.e. fracture to the right femur resulting in permanent disability and also underwent two surgeries in Osmania Government hospital, for which, he incurred huge amounts towards medical expenses.

9. The Tribunal has granted the following amounts under various heads:

1. Pain and suffering	-	Rs.10,000/-
2. Medical expenses	-	Rs.15,000/-
3. Extra-nourishment	-	Rs.3,000/-
4. Incidental expenses	-	Rs.2,000/-
5. Loss of earnings during the treatment.	-	Rs.4,000/-
6. Future loss of earnings	-	Rs.57,600/-
TOTAL	**-**	**Rs.91,600/-**

10. On the other hand, learned counsel for the Insurance Company has submitted that no disability certificate is produced before the Tribunal to prove that the claimant sustained 60% of permanent disability, and therefore, the Tribunal has rightly granted the compensation and prayed to dismiss the appeal of the claimant.

11. Though there is no proof for the income of the claimant, the oral evidence of PW-1/injured discloses that he was working as a labour and the accident occurred in the year 2000. Taking into consideration the law laid down by the Hon'ble Supreme Court in

Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd[2]., the notional income of the claimant is fixed as Rs.4,500/- per month. If 40% future prospects is added, it would come to Rs.6,300/- (Rs.4,500 + Rs.1,800). Except the oral evidence of PW-2/Doctor, there is no other documentary evidence before the Court to prove that the injured sustained 60% of permanent disability and he is unable to perform his duties. Therefore, this Court is inclined to take the disability of the appellant as 30%, relying on the oral evidence of the Doctor/PW-2. As the appellant was aged 35 years as on the date of the accident, the multiplier applicable would be '16' for the age group of 31 to 35 years. Therefore, the claimant/injured is entitled to Rs.3,62,880/- (Rs.6,300 X 12 X 16 X 30/100) towards loss of future income. Further, the claimant is also entitled for Rs.25,000/- towards pain and suffering, Rs.10,000/- towards transportation, Rs.40,000/- towards medical expenses already incurred by him as per Ex.A-3, Rs.10,000/- towards attendant charges and Rs.5,000/- towards extra-nourishment.

[2] (2011) 13 SCC 236

12. Thus, the claimant is entitled to compensation under the following heads;

1. Loss of future income	-	Rs.3,62,880/-
2. Pain and suffering	-	Rs.25,000/-
3. Medical expenses	-	Rs.40,000/-
4. Extra-nourishment	-	Rs.5,000/-
5. Transportation	-	Rs.10,000/-
6. Attendant charges	-	Rs.10,000/-
TOTAL	**-**	**Rs.4,52,880/-** **(rounded off to Rs.4,53,000/-)**

13. Accordingly, MACMA.No.241 of 2008 is dismissed and MACMA.No.254 of 2008 is allowed, enhancing the compensation amount awarded by the Tribunal from Rs.91,600/- to Rs.4,53,000/- with costs and interest at the rate of 7.5% per annum from the date of petition till the date of realization, payable by respondent Nos.1 and 2 jointly and severally, within one month from the date of receipt of a copy of this order. As the accident occurred in the year 2000, the claimant is entitled to withdraw the entire amount, after duly paying the deficit Court fee.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 01.12.2022

ajr